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# State v. Miles Appellant's Brief Dckt. 42569

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 42569
Plaintiff-Respondent,	)	
	)	CANYON COUNTY NO. CR 2014-3684
v.	)	
	)	
DERRICK C. MILES,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Derrick Miles appeals, contending the district court abused its discretion when it imposed an underlying sentence in this case which exceeded the prosecutor's recommendation as to the fixed term and is excessive given any reasonable view of the facts. Specifically, the sentence is revealed to be excessive by the facts, acknowledged by the district court, that Mr. Miles had initiated contact with the officers when he realized he was in a situation where crimes were being committed by the passengers in his car, and he made efforts to be honest with the district court in his allocution. As such, this Court should reduce his sentence as it deems appropriate.

### Statement of Facts and Course of Proceedings

As the district court pointed out, the factual history of this case was somewhat unique: Mr. Miles had flagged down officers when he became concerned that the people he was giving a ride to were in possession of methamphetamine. (Tr., p.37, Ls.14-20; 2014 Presentence Investigation Report (*hereinafter*, 2014 PSI), pp.3-4.) He agreed to drive them home because they were drunk and he feared they would try to drive themselves if he did not help out. (2014 PSI, p.4.) He admitted to officers that he was in possession of marijuana and drug paraphernalia, but he did not want to get in trouble for his passengers' methamphetamine. (2014 PSI, p.4; *see also* Tr., p.28, L.23 - p.29, L.3 (defense counsel representing that "as far as the marijuana is concerned and paraphernalia and everything else that was in the car, . . . the audio in this case [reveals] he does take full responsibility for that").)

However, as he showed the officer some items that belonged to the passengers, a baggie fell out of his pocket. (See, e.g., R., p.7.) Defense counsel indicated that the baggie had originally been in a cigarette box Mr. Miles had taken from one of his passengers. (Tr., p.8, Ls.6-17; Tr., p.29, Ls.4-9.) A field test indicated the baggie contained methamphetamine. (See, e.g., R., p.7.)

The district court determined there was some doubt, given the surrounding facts, as to whether Mr. Miles actually knew about the baggie or its contents. (Tr., p.38, Ls.10-15.) However, as the baggie had been in his pocket, the district court accepted his *Alford*<sup>1</sup> plea to the charge of possession of methamphetamine. (Tr., p.6, L.18 - p.8,

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<sup>1</sup> *North Carolina v. Alford*, 400 U.S. 25 (1970).

L.17 (discussing the basis for the *Alford* plea); see also Tr., p.29, Ls.7-9 (defense counsel explaining that the *Alford* plea was appropriate because, despite Mr. Miles' explanation, the fact that the baggie had been in his pocket would have made trial "a very difficult uphill battle").)

The district court also concluded, "I think that maybe for the first time in a long time when you appear in front of me today that you have tried to be honest and tell the truth." (Tr., p.38, Ls.18-21; compare, e.g., 2014 PSI, p.24 (the PSI author noting inconsistencies in Mr. Miles' responses in the interview); 2004 PSI, pp.16-17 (noting that there was a lot of conflicting information surrounding Mr. Miles' disclosures).) In recognition of those efforts at honesty, the district court accepted the joint recommendation for a suspended sentence. (Tr., p.38, Ls.18-25.) However, it imposed an underlying unified sentence of seven years, with four years fixed. (Tr., p.39, Ls.1-4; compare Tr., p.28, Ls.7-8 (the prosecutor recommending an underlying unified sentence of seven years, with only three years fixed).) Mr. Miles filed a notice of appeal timely from the judgment of conviction. (R., pp.51-56.)

### ISSUE

Whether the district court abused its discretion by imposing an underlying sentence which exceeded even the prosecutor's sentence recommendation and is excessive given any reasonable view of the facts.

### ARGUMENT

The District Court Abused Its Discretion By Imposing An Underlying Sentence Which Exceeded Even The Prosecutor's Sentence Recommendation And Is Excessive Given Any Reasonable View Of The Facts

Where a defendant contends the sentencing court imposed an excessively harsh sentence the appellate court will conduct an independent review of the record, giving consideration to the nature of the offense, the character of the offender, and the protection of the public interest. See *State v. Reinke*, 103 Idaho 771, 772 (Ct. App. 1982). The Idaho Supreme Court has held that, “[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.” *State v. Jackson*, 130 Idaho 293, 294 (1997) (quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). Mr. Miles does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, he must show that, in light of the governing criteria, the sentence is excessive considering any view of the facts. *Id.*

Here, the facts show the district court abused its discretion by imposing a sentence with a fixed term which exceeded the fixed term even the prosecutor felt was appropriate on the facts of this case. The prosecutor acknowledged the inconsistencies in Mr. Miles’ statements in the PSI, but “I think once the full picture came out, you know, we’re still going to recommend probation.” (Tr., p.27, Ls.2-3.) To that end, the prosecutor concluded that an underlying sentence with only three years fixed was sufficient to protect society and serve the other goals of sentencing in this case. (See Tr., p.26, L.19 - p.28, L.11.) The district court also highlighted several mitigating factors that are present in this case. For instance, it determined Mr. Miles had made a genuine effort to be honest in his allocution. (Tr., p.34, Ls.7-9; Tr., p.38, Ls.20-21.) One example of that honesty was Mr. Miles’ disclosure that he had been in a gang

when he was younger, but had taken steps to disassociate himself from the gang.  
(Tr., p.34, L.23 - p.35, L.5; Tr., p.32, L.12.)

The district court also noted that Mr. Miles' behavior during the encounter with police – calling them over because “he was in a situation in which crimes were being committed” – indicated he was being honest in his account as to his possession of the methamphetamine. (Tr., p.37, Ls.14-20.) Additionally, cooperation with law enforcement is an independent mitigating factor. See *State v. Ybarra*, 122 Idaho 11, 16 (Ct. App. 1992).

Furthermore, as defense counsel pointed out, Mr. Miles had been attending counselling for his mental health issues, indicating an amenability to continued treatment. (Tr., p.30, Ls.1-2.) Therefore, the district court abused its discretion when it imposed a sentence with a fixed period, which exceeded even of the prosecutor's recommended term and is excessive given any reasonable view of the facts.

### CONCLUSION

Mr. Miles respectfully requests that this Court reduce his sentence as it deems appropriate.

DATED this 7<sup>th</sup> day of April, 2016.

\_\_\_\_\_/s/\_\_\_\_\_  
BRIAN R. DICKSON  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 7<sup>th</sup> day of April, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

DERRICK C MILES  
9181 W COREY LN  
BOISE ID 83705

GEORGE A SOUTHWORTH  
DISTRICT COURT JUDGE  
EMAIL BRIEF

RYAN DOWELL  
CANYON COUNTY PUBLIC DEFENDER  
EMAIL BRIEF

KENNETH K JORGENSEN  
CRIMINAL DIVISION  
EMAIL BRIEF

\_\_\_\_\_/s/\_\_\_\_\_  
MARY ANN LARA  
Administrative Assistant

BRD/mal